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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,087	12/30/2003	Clarke Berdan II	25401A	7962
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OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023			EXAMINER DICUS, TAMRA	
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			1794	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/749,087	<b>Applicant(s)</b> BERDAN ET AL.	
	<b>Examiner</b> TAMRA L. DICUS	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The prior rejections are withdrawn due to the Examiner's updated search.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 3 recites an edge portion that is from a substrate formed of a thermoplastic material. It is not clear if the edge comprises a substrate of a material or the edge and substrate produce a laminated element each of the material or a blend. It is not clear if the substrate is an additional layer to the body and edge or is a thermoplastic material of the body and edge. Thus the overall structure is not clear.

4. To claim 10, it is not clear if the body surfaces and edges are sides of the main body, or if the "at least one side" is additional surfaces or edges or the body. It is not clear where an adjacent outer region is, on the body or the edge or another layer.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Heller (US 3,907,193).

Heller teaches a plastic sheet material container. This is seen as functioning as an acoustic panel since the same material and structure is taught, see MPEP 2111.02. Without such reliance, however, a preamble is generally not limiting when the claim body describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention. Consequently, “preamble language merely extolling benefits or features of the claimed invention does not limit the claim scope without clear reliance on those benefits or features as patentably significant.” In *Poly-America LP v. GSE Lining Tech. Inc.*, 383 F.3d 1303, 1310, 72 USPQ2d 1685, 1689 (Fed. Cir. 2004). The patent further teaches the container joined by fold lines and compressed (6:55-65) and the sheet material between the indentations (peripheral edge) being greater density than the density of the sheet material away from the fold lines (main body having sides as claimed). Additionally the sheet material of the container can be folded on itself (see FIG. 3 showing fold point, compressed regions, and four surfaces) to form the container. See patented claim 1, Abstract, 2:30-60, 3:25-65. The plastic sheet is made of materials suitable for use in making boxes or cartons (4:30-45) such as polystyrene. While Heller does not use the same wording, the sheet material of the same material is inherently decorative. Claims 1 and 3 are met.

Further to claims 5, 7-9 product by process limitations such as formed by rotating, as recited are given little weight in a product claim. Even though product-by-process claims are

limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698. Both Applicant's and prior art reference's product are the same.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 6, and 10-12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Heller (US 3,907,193) in view of J. Bjorksten (US 3,404,748 ).

Heller essentially teaches the claimed invention, the features relied upon above.

There are several flanges and edges in a non-linear shape shown in FIG. 5 of Heller.

Heller does not teach an additional second material affixed to the main body as per claim 6 or a reinforcing edge on a body formed by compressing an outer region forming compressed fibers of the flange (claim 10), or how the flanges are folded (claims 16-19).

Bjorksten teaches a laminate where reinforcing fibers are in between two polymer films (second material) where the laminate provides thermal insulation, strength, and lightness where foldability is required, (2:5-40) including acoustical material (5:45-50). The fibers remain

slidable so they can move into bundles when exposed to stresses (2:50-55). Because the fibers are on the opposing sides and all over the laminate, and Bjorksten teaches the laminate is foldable and exposed to stresses, the teaching is construed to meet reinforcing edges having compressed fibers.

It would have been obvious to one having ordinary skill in the art to have modified Heller to include a second material and compressed fibers to impart strength to foldable products as cited above.

Further to the process steps of claim 10, product by process limitations such as rotating, are given little weight in a product claim. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698. Both Applicant's and prior art reference's product are the same.

8. Claim 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable Heller (US 3,907,193) in view of J. Bjorksten (US 3,404,748 ) and further in view of US Hoffman, Jr. (US 3835604 A).

The features of the combination are relied upon above. There are several flanges and edges in a non-linear shape shown in FIG. 5 of Heller forming a package or container (claims 15-19). Bonding the edge to the main body is known to increase interfacial adhesive strength and

double folding a flap would have been obvious depending on what the container is to fit the desired size (claim 15).

The combination does not teach decoration as per instant claim 13.

Hoffman, Jr. teaches a similar folded facing and insulation panel wherein a principal objective of his invention is to provide building insulation of the general kind referred to with a facing sheet having a decorative pattern such as indicia, so that the installed appearance of the insulation is aesthetic or attractive (1:40-55, 4:1-15, Fig. 1 and Fig. 1a and associated text

It would have been obvious to one having ordinary skill in the art to have modified the panel of the combination to include decoration as claimed for aesthetic or attractive appearance as taught by Hoffman, Jr. cited above. While the decoration is shown on the edges, it would have been obvious to extend it throughout the entire body to further make the entire panel attractive.

9. Claim 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heller (US 3,907,193) in view of J. Bjorksten (US 3,404,748 ) and further in view of Hoffman, Jr. (US 3835604 A) and further in view of Chenoweth (US 4946738).

The combination is applied above.

The references do not teach using bicomponent fibers as per claims 4 and 14.

Chenoweth teaches a nonwoven material comprising a matrix consisting of glass fibers, solid or hollow homogeneous synthetic fibers, such as polyester, nylon and second, bi-component synthetic fibers which have been intimately combined with a thermosetting resin into a homogeneous mixture. This mixture is dispersed to form a blanket and melted to be formed into complexly curved and shaped configurations. See 1:1-30, 3:1-10, 4:30-68, Abstract.

It would have been obvious to one having ordinary skill in the art to have modified the combination to include bicomponent polyester fibers as claimed because Chenoweth teaches the fibers are used for reinforcement purposes and for insulating characteristics in curved and shaped configurations and panels as cited above. To the application of heat and bonding process steps, these are in a product claim, given little weight. See product by process rationale above.

### ***Response to Arguments***

10. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAMRA L. DICUS whose telephone number is (571)272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tamra L. Dicus /TLD/  
Examiner  
Art Unit 1794

March 22, 2008

/Terrel Morris/  
Supervisory Patent Examiner  
Group Art Unit 1794